



Order

IN THE COURT OF CIVIL JUDGE AND JMFC, LAXMESHWARPresent: **Satisha M.**

B.A.L., L.L.B.

Civil Judge and JMFC, Laxmeshwar

Dated this the 03rd day of December-2025**O.S.No.155/2021****Plaintiffs:**

1. Smt. Shivakka W/o. Mallappa Balagoudra,
Age: 35 Yrs., Occ: Household Work,
R/o. Hanganakatti, Tq/Dt: Gadag
and 4 others.

(By Shri. V.M.H., Advocate)**Vs.****Defendants:**

1. Shri. Basavantappa S/o. Ningappa Attigeri,
Age: 63 Yrs., Occ: Agriculture,
R/o. Ramageri, Tq: Laxmeshwar, Dt: Gadag
and 2 others.

(D1 By Shri. S.H.M. Adv.**D2 Ex-parte****D3 By Smt. N.M.R. Adv.)****PARTIES TO THE I.A.NO.V**

Applicant: Shri. Virupakshappa S/o. Hanamantappa Manjalapur
(Defendant No.3)

// Vs //

Opponent: Smt. Shivakka W/o. Mallappa Balagoudra

ORDERS ON I.A. NO.V FILED UNDER ORDER 7 RULE 11(a) & (d) OF CPC BY THE DEFENDANT NO.3

Stage of the suit at the time of filing application: Further Cross-examination of PW-1

Nature of suit: Partition and separate possession.

The defendant No.3 has filed I.A. No.V Under Order VII Rule 11 (a) & (d) of C.P.C., praying to reject the plaint as the suit of plaintiffs does not disclose cause of action and also barred under law.

2. The contention of the defendant No.3 is that, Defendant No.1 had entered into an agreement of sale with Defendant No.3 in respect of land bearing R.S. No.103/7 measuring 28 guntas. Subsequently, Defendant No.3 filed O.S. No.167/2011 before the competent court seeking specific performance of the said agreement against Defendant No.1. The said suit was decreed on 19.10.2012. Aggrieved by the said judgment and decree, Defendant No.1 preferred an appeal in R.A. No.1/2023 before the Hon'ble Senior Civil Judge, Laxmeshwar, which came to be dismissed on 20.12.2023. Meanwhile, Defendant No.3 filed Ex. No.9/2019 and took

possession of the suit property in execution of the decree, and his name has also been mutated in the revenue records accordingly. The present suit has been filed by the plaintiffs alleging that the said agreement of sale is fabricated and false. However, the same subject matter was already adjudicated in the earlier suit O.S.No.167/2011, which was decreed on merits. Therefore, the present claim is barred under Section 11 of the Code of Civil Procedure by the principle of res-judicata, as the issue has already been finally decided by a competent court. Merely because the earlier decree was passed ex-parte does not render it invalid or open for re-litigation, since it still operates as a valid decree binding on the parties. Furthermore, on a perusal of paragraph No.4 of the plaint and other pleadings, it is evident that no cause of action has arisen in favour of the plaintiffs to institute the present suit. The facts alleged in the plaint do not disclose any legal basis for the relief claimed. In addition, from the evidence already recorded, it is revealed that Defendant No.1 was adopted by Ningappa, and the suit property had come to him through his adoptive father. Under

the Hindu Adoptions and Maintenance Act, 1956, the property inherited from an adoptive father is treated as the self-acquired property of the adopted son, and not as ancestral or coparcenary property. Therefore, the plaintiffs' claim that the property is joint family property is legally untenable. For all these reasons, the present suit filed by the plaintiffs is liable to be dismissed, as it is devoid of cause of action and barred by law.

3. Conversely, the plaintiffs have filed their objections contending that the IA No.5 filed by Defendant No.3 is false and filed with mala fide intent. It is submitted that in the year 2021, the plaintiffs had instituted the present suit seeking relief of partition against Defendant Nos.1 and 2. Since the suit schedule property had been purchased by Defendant No.3, he was necessarily made a party to the proceedings. The plaintiffs further contend that in the affidavit filed in support of the said I.A. No.5, the statements made in paragraph No.1 are partly true, as Defendant No.3 had indeed obtained an ex parte decree in O.S. No.167/2011 against Defendant No.1 before this very

Court. Aggrieved by that decree, Defendant No.1 preferred R.A. No.1/2023 before the Hon'ble Senior Civil Judge, Laxmeshwar, which was dismissed. Thereafter, against the said appellate order, Defendant No.1 has filed R.S.A. No.100246/2024 before the Hon'ble High Court of Karnataka, Dharwad Bench, which is still pending consideration. It is further contended that the statements made in paragraphs 2 and 3 of the affidavit filed in support of the said interlocutory application are completely false and misleading. The plaintiffs assert that Defendant No.3, having remained silent for nearly four years, has now filed this false and vexatious application with an ulterior motive to harass the plaintiffs, to prolong the proceedings, and to wrongfully secure possession of the suit property.

4. The plaintiffs submit that the plea raised by Defendant No.3 regarding res judicata is misconceived and inapplicable to the facts of the present case. The said application has been filed with the intention to delay the trial and obstruct the adjudication of the suit. Therefore, the plaintiffs pray that the present interlocutory application, being

not maintainable in law, deserves to be rejected with exemplary costs, as it is a frivolous and mala-fide attempt to misuse the process of the Court.

5. Heard arguments of counsel for plaintiffs and defendant No.3 on I.A. No.V. Perused the materials available on records.

6. The points that would arise for consideration are as under;

POINTS

- 1) ***Whether averments made in plaint discloses the suit of the plaintiffs has no cause of action and barred by law?***
- 2) ***Whether suit of the plaintiffs are liable to be rejected Under Order 7 Rule 11 (a) and (d) of C.P.C. as prayed under IA No.II?***
- 3) ***What order?***

7. This court findings to the above points as follows;

Point No. 1: In the Negative

Point No. 2: In the Negative

Point No. 3: As per final order
for the following ...

REASONS

8. **POINT NO.1 AND 2:** For the sake of convenience, these two points are taken together for discussion to avoid repetition of facts.

Before answering the above said points, it is useful to refer the relevant statutory provisions of Code of Civil Procedure. The relevant Rule relating to rejection of plaint is that, Rule 11 of Order VII of Code of Civil Procedure, it read as under;

Order VII Rule 11: Rejection of plaint.- The plaint shall be rejected in the following cases:

- (a) where it does not disclose a cause of action;***
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the Court, fails to do so;***
- (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;***
- (d) where the suit appears from the statement in the plaint to be barred by any law;***

[(e) where it is not filed in duplicate;]

[(f) where the plaintiff fails comply with the provision of Rule 9;]

[provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying requisite stamp-papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.]

9. It is a well-settled principle of law that for the purpose of deciding an application under Order VII Rule 11 of the Code of Civil Procedure, the Court has to confine its consideration solely to the averments made in the plaint and the documents annexed thereto. The defence taken by the defendant, or any materials produced by him, cannot be looked into at this stage. The law in this regard has been clearly laid down by the Hon'ble Supreme Court in **T. Arivandandam V/s**

T.V. Satyapal [(1977) 4 SCC 467] the Court must look only at the plaint as a whole to see if it discloses a cause of action or is barred by any law.

10. The object of Order VII Rule 11 CPC is to weed out frivolous litigation at the threshold, however, the power under this provision is drastic in nature and must be exercised sparingly and only in clear cases where, even accepting the plaint averments as true, no cause of action is made out, or the suit is ex facie barred by any law.

11. In the present case, the plaintiffs have instituted the suit seeking partition and separate possession of several items of immovable properties described in the schedule, claiming them to be joint family properties. The defendant No.3, who is a purchaser of one item of property (R.S. No.103/7), has filed the present application to reject the entire plaint on the ground that the suit is barred by res judicata and discloses no cause of action.

12. However, a careful reading of the plaint reveals that the plaintiffs have specifically pleaded that all the schedule

properties are joint family properties. The plaintiffs have alleged that the sale transaction in favour of Defendant No.3 was without legal necessity and not binding upon their undivided shares. These averments, if proved, would clearly constitute a cause of action for the reliefs sought in the suit.

13. Further, the plea of res judicata raised by Defendant No.3 cannot be accepted at this preliminary stage. For the application of Section 11 CPC, the following essential conditions must be satisfied. The matter directly and substantially in issue in the subsequent suit must have been directly and substantially in issue in the former suit. The former suit must have been between the same parties or between parties under whom they or any of them claim. The former suit must have been decided by a Court of competent jurisdiction. The matter must have been heard and finally decided.

14. In the present case, it is an undisputed fact that the plaintiffs were not parties to O.S.No.167/2011, the earlier suit filed by Defendant No.3 against Defendant No.1 for specific

performance of an agreement of sale. Therefore, the fundamental requirement of identity of parties is absent. Consequently, the bar of res judicata cannot be invoked against the plaintiffs who claim independent and co-parcenary rights in the suit property. Merely because Defendant No.3 obtained an ex-parte decree in the earlier suit against Defendant No.1, the same cannot extinguish or curtail the lawful rights, if any, of the plaintiffs, who were not parties to that proceeding.

15. It is also well settled that a decree passed ex parte is as binding as a decree passed on contest, but its binding effect is limited to the parties to that decree. Hence, the rights of third parties or coparceners who were not before the court in the earlier suit cannot be affected or concluded by such a decree. The contention of Defendant No.3 that the issue has attained finality is, therefore, legally untenable.

16. Moreover, the question whether the property bearing R.S. No.103/7 is the self-acquired property of Defendant No.1 or forms part of the joint family properties is a mixed question of law and fact which requires full-fledged adjudication on the

basis of evidence to be led by both parties. The defendant has merely asserted that Defendant No.1, being an adopted son, inherited the property from his adoptive father, and that such property is his absolute property under the Hindu Adoptions and Maintenance Act, 1956. However, whether such adoption took place in accordance with law, and whether the property was obtained by gift, bequest, or inheritance from the adoptive father, are all factual issues to be determined during trial.

17. At this stage, the Court cannot presume the property to be self-acquired merely on the bald assertions made by Defendant No.3, especially when the plaintiffs have pleaded that all schedule properties are joint family properties held and enjoyed collectively. The veracity of those claims and the nature of the property can only be determined after recording evidence and examining the relevant documents.

18. It is also to be noted that the suit involves multiple items of property, and the claim of Defendant No.3 relates only to one such property. Therefore, even assuming, for argument's sake, that the defendant's claim in respect of that particular

property is arguable, that by itself cannot be a ground to reject the entire plaint under Order VII Rule 11 CPC. The plaint cannot be partially rejected on a selective basis when the cause of action is interlinked with other properties forming part of the same joint family nucleus.

19. The plea of absence of cause of action raised by the defendant also cannot be sustained. A “cause of action” refers to the bundle of facts which gives a person the right to seek judicial redress. The plaint in this case narrates in detail the relationship between the parties, the mode of acquisition of properties, the alleged illegal alienation, and the refusal of the defendants to effect partition. These facts, if taken as true, certainly disclose a cause of action in law.

20. In the light of these settled principles, it is clear that the present case is not one where the plaint can be rejected at the threshold. The disputes raised between the parties require detailed adjudication through evidence, both oral and documentary. For these reasons, the Court is of the firm opinion that the plaint discloses a valid cause of action and

that the suit is not barred either by law or by the principle of res judicata. The defendant has also not produced any cogent material or documentary evidence to substantiate the grounds raised in this application. Hence, the application deserves to be rejected with costs. For these reasons, this court proceed to answer **Point No.1 and 2 in the Negative.**

21. **POINT NO.3:** In view of findings given on point no.1 and 2, this court proceed to pass the following -

ORDER

I.A. No.5 filed under Order VII Rule 11 (a) and (d) of C.P.C., filed by the defendant No.1 and 2 is hereby dismissed with cost of Rs.500/-.

The observation made in the above order is only in respect of considering I.A. No.5 and it will not come in the way of considering the main suit.

(Dictated to the Stenographer directly on computer, typed by her, then script corrected by me and pronounced in the open Court dated this 03rd day of December- 2025)

(Satisha M.)
C.J. & JMFC, Laxmeshwar